

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
CENTRAL ISLIP DIVISION

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CHAPTER 13

IN RE:

CASE NO. 8-19-73995-REG

Louis Joseph Paini,

Assigned to:
Hon. Robert E. Grossman

Debtor(s).

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OBJECTION TO DEBTOR'S REQUEST FOR LOSS MITIGATION

ANDREW GOLDBERG, the undersigned, does hereby affirm to be true, under the penalties of perjury as follows:

1. I am an attorney duly admitted to practice in the State of New York and before the United States District Court for the Eastern District of New York. As the attorney for Wells Fargo Bank, N.A. (hereinafter the "Secured Creditor"), I am fully familiar with the facts and circumstances set forth herein. I make this Affirmation in Opposition to the Debtor's Request for Loss Mitigation.

2. Secured Creditor is the holder of a note and mortgage that encumbers the Debtor's property located at 31 Milldown Road, Yaphank, NY 11980-9770 (the "Premises").

3. As of June 3, 2019, the unpaid principal balance owed on the Note and Mortgage was \$217,236.35 and with interest thereon, late charges and escrow advances, the approximate payoff amount owed to the Secured Creditor is \$460,996.25. The Debtor remains due for their November 12, 2009 contractual payment. Debtor is currently 117 months delinquent on their loan.

4. As the loan became delinquent, Movant commenced a foreclosure action on July 12, 2012, with the filing of a Summons and Complaint, that eventually proceeded to a Judgment of Foreclosure and Sale entered on November 24, 2017. A copy of the Judgment of Foreclosure and Sale is annexed hereto as Exhibit “A”.

5. The Court should note that Debtor and the Non-filing co-debtor, Audrey Paini (“Non-filing co-debtor”) have filed four consecutive Chapter 13 Bankruptcy matters to thwart scheduled foreclosure sales. This is referenced in Secured Creditor’s Application for In Rem Relief pursuant to 11 USC 362(d)(4) and/or in the alternative an Order Granting Relief from the Automatic Stay with Prejudice (the “In-Rem Motion”). Please see Court Docket entry #11 dated June 14, 2019.

6. In summary: The Non-filing co-debtor filed Case No. 8-17-72668-REG on May 2, 2017, which Movant obtained relief from the automatic stay on September 14, 2017; the Non-filing co-debtor then filed Case No. 8-18-71054-REG on February 19, 2017. Said case was subsequently dismissed by Order on the Chapter 13 Trustee’s Motion to Dismiss on July 11, 2018. The Non-filing co-debtor filed Case No. 8-18-76432-REG on September 24, 2018. This case was dismissed upon the Court’s Order on Trustee’s Motion to Dismiss on March 5, 2019. This current matter was filed by the Debtor under Case No. 8-19-73995-REG on June 3, 2019.

7. The loan has been repeatedly reviewed for loss mitigation since the default date of November 12, 2009. The Debtor and Non-filing co-debtor were reviewed and subsequently denied for a modification on August 20, 2010 for their failure to return requested documents. On April 14, 2011, the Debtor and Non-filing co-debtor were denied, again, for their failure to return requested information/documents. On November 29, 2013, a denial was issued due to the failure to respond for request of documents needed for review.

8. The two most recent loss mitigation reviews were conducted as part of this Court's Loss Mitigation program.

9. In case No. 8-18-71054-REG, Non-filing co-debtor requested loss mitigation and an Order granting the request was entered on February 23, 2018. The loss mitigation review was completed and a denial issued on April 26, 2018, due to the inability to afford the modified payment. An appeal was submitted which resulted in a denial as well. A copy of Movant's loss mitigation status letter detailing the denial is annexed hereto as Exhibit "B".

10. In case No. 8-18-76432-REG, Non-filing co-debtor requested loss mitigation and an Order granting the request was entered on October 26, 2018. The loss mitigation review was completed and a denial issued on December 11, 2018, due the ability to make their current mortgage payment and a negative net present value. A copy of Movant's loss mitigation status letter detailing the denial is annexed hereto as Exhibit "C".

11. The Debtor filed a Motion for Request to enter into this Court's Loss Mitigation Program on July 19, 2019. See Debtor's Motion for Request for Loss Mitigation annexed hereto as Exhibit "D".

12. The Debtor and Non-filing co-debtor have been reviewed and denied for loss mitigation numerous times, and as recently as several months ago. Debtor has failed to submit any documentation showing a change in circumstances which would indicate that a new review would result in a different decision. Furthermore, Debtor and Non-filing co-debtor's consecutive Bankruptcy filings show a clear abuse of the Bankruptcy system.

WHEREFORE, it is respectfully requested that under all the facts and circumstances in this case, an order be made denying the Debtor' Request for Loss Mitigation; and for such other, further and different relief as this Court may deem just, proper and equitable.

Dated: Carle Place, New York
August 8, 2019

STEIN, WIENER & ROTH, L.L.P.

/s/ Andrew Goldberg, Esq.
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